

## § 1.872-1

## 26 CFR Ch. I (4-1-11 Edition)

of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 8734, 62 FR 53416, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72184, 72187, Dec. 31, 1998; T.D. 8856, 64 FR 73409, 73412, Dec. 30, 1999; T.D. 9323, 72 FR 18387, Apr. 12, 2007; 72 FR 26543, May 10, 2007]

### § 1.872-1 Gross income of nonresident alien individuals.

(a) *In general*—(1) *Inclusions*. The gross income of a nonresident alien individual for any taxable year includes only (i) the gross income which is derived from sources within the United States and which is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual and (ii) the gross income, irrespective of whether such income is derived from sources within or without the United States, which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. For the determination of the sources of income, see sections 861 through 863 and the regulations thereunder. For the determination of whether income from sources within or without the United States is effectively connected for the taxable year with the conduct of a trade or business in the United States, see sections 864(c) and 871 (c) and (d), §§ 1.864-3 through 1.864-7, and §§ 1.871-9

and 1.871-10. For special rules for determining the income of an alien individual who changes his residence during the taxable year, see § 1.871-13.

(2) *Exchange transactions*. Even though a nonresident alien individual who effects certain transactions in the United States in stocks, securities, or commodities during the taxable year may not, by reason of section 864(b)(2) and paragraph (c) or (d) of § 1.864-2, be engaged in trade or business in the United States during the taxable year through the effecting of such transactions, nevertheless he shall be required to include in gross income for the taxable year the gains and profits from those transactions to the extent required by § 1.871-7 or § 1.871-8.

(3) *Exclusions*. For exclusions from gross income, see § 1.872-2.

(b) *Individuals not engaged in U.S. business*. In the case of a nonresident alien individual who at no time during the taxable year is engaged in trade or business in the United States, the gross income shall include only (1) the gross income from sources within the United States which is described in section 871(a) and paragraphs (b), (c), and (d) of § 1.871-7, and (2) the gross income from sources within the United States which, by reason of section 871 (c) or (d) and § 1.871-9 or § 1.871-10, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.

(c) *Individuals engaged in U.S. business*. In the case of a nonresident alien individual who is engaged in trade or business in the United States at any time during the taxable year, the gross income shall include (1) the gross income from sources within and without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, (2) the gross income from sources within the United States which, by reason of the election provided in section 871(d) and § 1.871-10, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, and (3) the gross income from sources within the United States which is described in section 871(a) and paragraphs (b), (c),

and (d) of § 1.871-7 and is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.

(d) *Special rules applicable to certain expatriates.* For special rules for determining the gross income of a nonresident alien individual who has lost U.S. citizenship with a principal purpose of avoiding certain taxes, see section 877(b)(1).

(e) *Alien resident of Puerto Rico.* This section shall not apply in the case of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See section 876 and § 1.876-1.

(f) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.872-1 (Revised as of January 1, 1971).

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 7332, 39 FR 44228, Dec. 23, 1974]

#### § 1.872-2 Exclusions from gross income of nonresident alien individuals.

(a) *Earnings of foreign ships or aircraft—(1) Basic rule.* So much of the income from sources within the United States of a nonresident alien individual as consists of earnings derived from the operation of a ship or ships documented, or of aircraft registered, under the laws of a foreign country which grants an equivalent exemption to citizens of the United States nonresident in that foreign country and to corporations organized in the United States shall not be included in gross income.

(2) *Equivalent exemption—(i) Ships.* A foreign country which either imposes no income tax, or, in imposing an income tax, exempts from taxation so much of the income of a citizen of the U.S. nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of a ship or ships documented under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of a foreign ship or ships.

(ii) *Aircraft.* A foreign country which either imposes no income tax, or, in

imposing an income tax, exempts from taxation so much of the income of a citizen of the U.S. nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of aircraft registered under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of foreign aircraft.

(3) *Definition of earnings.* For purposes of subparagraphs (1) and (2) of this paragraph, compensation for personal services performed by an individual aboard a ship or aircraft does not constitute earnings derived by such individual from the operation of ships or aircraft.

(b) *Compensation paid by foreign employer to participants in certain exchange or training programs—(1) Exclusion from income.* Compensation paid to a nonresident alien individual for the period that the nonresident alien individual is temporarily present in the United States as a nonimmigrant under subparagraph (F) (relating to the admission of students into the United States) or subparagraph (J) (relating to the admission of teachers, trainees, specialists, etc., into the United States) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F) or (J)) shall be excluded from gross income if the compensation is paid to such alien by his foreign employer. Compensation paid to a nonresident alien individual by the U.S. office of a domestic bank which is acting as paymaster on behalf of a foreign employer constitutes compensation paid by a foreign employer for purposes of this paragraph if the domestic bank is reimbursed by the foreign employer for such payment. A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (J) includes a nonresident alien individual admitted to the United States as an “exchange visitor” under section 201 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1446), which section was repealed by section 111 of the Mutual Education and Cultural Exchange Act of 1961 (75 Stat. 538).